(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CRIMINAL MISC. APPLICATIONS NO.137 AND 138/2004.

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. A.V. Nigalye, Advcoate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 17TH JUNE, 2004.

P.C.:

Heard Shri Nigalye, the learned counsel of the Accused and Shri Sardessai, the learned Public Prosecutor.

The accused has been convicted and sentenced by the learned Special Judge of N.D.P.S. Court in Special Criminal Case No.19/2001 under Section 20(b)(ii) read with section 20(b)(ii)(B) of the N.D.P.S. Act, 1985 to undergo R.I. for a term of five years and to pay a fine of Rs.50,000/- in default to undergo

simple imprisonment for a period of six months. It is not disputed on behalf of the prosecution that the accused before he was convicted for the said offence before the learned Special Judge, Mapusa, was on bail on conditions imposed by this Court, which conditions, it is submitted that the accused has strictly complied.

Shri Sardessai has brought to my notice a decision of the Hon'ble Supreme Court in the case of **Nhagwan Rama Shinde Gosai and others v. State of Gujarat (1999 S.C.C.** (Cri) 553). In this case the Supreme Court has observed that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. The Supreme Court has also observed that if for any reason the sentence of a

limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases since otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. The Supreme Court also observed that when the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. The appellate courts can impose similar conditions when bail is granted.

The hearing of the present appeal is bound to take some more time. There is nothing exceptional against the accused for this court not to release him on bail. The accused was on bail pending trial on

certain conditions which were strictly complied by the accused. I am therefore of the opinion that the right of appeal has got to be made meaningful and effective and for that purpose I am inclined to suspend the sentence imposed upon the accused by the learned Special Judge, Mapusa by Order dated 9.6.2004 and direct the release of the accused on bail on the same terms and conditions as the accused was ordered to be released by this Court during the pendency of the trial.

Certified copy expedited.

N.A. BRITTO, J.

sl.